

BEFORE THE
BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

In Re Petition Filed by the Division of Oil, Gas & Mining for an Order Requiring Immediate Reclamation of the Drum Mine in Millard County, Utah By Western States Minerals Corporation and Jumbo Mining Company	ORDER FOR THIRD AMENDMENT TO PRE-HEARING SCHEDULING AND DISCOVERY ORDER Docket No. 97-009 Cause No. M/027/007
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This case, which was filed by the Division of Oil, Gas and Mining ("DOGM") as an enforcement proceeding, concerns a gold mine located in Millard County, Utah and Juab County, Utah named the Drum Mine (the "Mine"). The Division seeks an order for certain relief against the two operators of the Mine, Jumbo Mining Company ("Jumbo") and Western States Minerals Corporation ("Western"), which they resist.

At its regularly scheduled meeting held October 22, 1997 at 10 a.m. in the Natural Resources Building at 1594 West North Temple, Hearing Room 1040, the Board of Oil, Gas & Mining (the "Board") decided to enter a third amendment to the Scheduling Order in the above matter, so the Chairman is issuing this Order in furtherance of that decision. The reasons are set forth below.

The following Board members were present and participated at the hearing:

Dave D. Lauriski, Chairman
Stephanie Cartwright
Jay L. Christensen
Elise Erler
Thomas B. Faddies
W. Allan Mashburn
Raymond Murray

The Board has considered the relevant papers filed by the parties, and finds no need for oral argument because this Order concerns simple and routine scheduling questions.

Now, being fully advised of the premises, and for the good cause set forth below, THE BOARD ORDERS THE FOLLOWING CHANGES IN THE SCHEDULING ORDER:

A short review of the procedural history of this matter is instructive. In the above-captioned matter, on May 1, 1997 the Board entered that certain “Pre-Hearing Scheduling and Discovery Order” (the “Scheduling Order”). The Scheduling Order states that the hearing was originally set to begin May 28, 1997, but was changed at the request of Western and the other parties to begin August 27, 1997. On June 25, 1997, the Board granted the first amendment to the Scheduling Order (“First Amendment”). Later, on July 2, 1997, the Board granted

a stipulated second request to amend the scheduling order (the "Second Amendment"). Under the terms of the Second Amendment, the hearing start date was changed from August 27, 1997 to October 22, 1998.

As initially filed, the Division sought an order of reclamation of the Mine on the asserted grounds that mining has ceased (the "Reclamation Issue"). However, several months after the entry of the Second Amendment, the Division started a separate administrative proceeding in an effort to require Jumbo and Western to post respective reclamation sureties in significantly larger dollar amounts than those companies already had on file (the "Bond Issue"). Arguing, in substance, that the Bond Issue and the Reclamation Issue were inter-related, the Division moved (on September 12, 1997 and in subsequent filings) to continue the October 22, 1997 start date to a new start date of February 25, 1997. Jumbo did not oppose that request. Western did not oppose a continuance, per se, but Western refused to stipulate to a specific date. Western also sought a bifurcated hearing on the Bond Issue and the Reclamation Issue.

On October 3, 1997, to resolve the dispute created by Western's objections to the Division's continuance motion, the Board issued that certain "Order & Notice of Hearing Continuing the Formal Hearing and Consolidating Said Hearing With the Formal Hearing on the Bond Issue" (hereinafter the

"Consolidation Order"). In the Consolidation Order, the Board consolidated the hearing on the Bond Issue with the hearing on the Reclamation Issue. The Board also set certain briefing deadlines on the Bond Issue. The Board expressly ordered that the evidentiary hearing (on both the Bond Issue and the Reclamation Issue) will commence February 25, 1998. The Board denied Western's bifurcation request. Paragraph 8 of the Consolidation Order further stated:

"8. Consistent with the new hearing and briefing schedule set forth above, and by no later than 15 days after the date this Order is issued, DOGM, Western and JMC shall file with the Board a Stipulation, Motion and proposed Order to revise all of the specific subsidiary pre-hearing scheduling matters addressed more particularly in that certain "Stipulation, Motion and Order for Second Amendment to Pre-Hearing Scheduling and Discovery Order" (the "Scheduling Order") issued July 2, 1997 in this matter."

Id. (emphasis added). The fifteen day deadline as established by Paragraph 8 fell on October 20, 1997.

In an apparent effort to comply with Paragraph 8 of the Consolidation Order, the Division served on Western and Jumbo a proposed, "Draft Stipulation, Motion and Order for Third Amendment to Pre-Hearing Scheduling and Discovery Order" (10/8/97) (hereinafter "Draft Stipulation"). The Division has filed with the Board a copy of the unsigned Draft Stipulation. Jumbo did not file any objection to the Draft Stipulation. The day after the deadline, on October 21,

1997, Western filed a document entitled, "Response of Western States Minerals Corporation to Proposed Stipulation, Motion and Order for Third Amendment to Pre-Hearing Scheduling and Discovery Order" (hereinafter "Western's Objection").

The Board finds that the subsidiary pre-hearing scheduling deadlines as generally and timely proposed by the Division in the Draft Stipulation are reasonable. Since Jumbo has not opposed the Draft Stipulation, the Board infers that it is acceptable to Jumbo. As for Western's Objection to the Draft Stipulation, the Board finds: (a) that it is late without excuse and (b) that, on the merits, it is not well-taken under the circumstances of this case. The Board specifically denies Western's request to continue the first day of the hearing from February 25, 1998 until the Board's March 1998 hearing. The Board notes that the hearing in this matter already has been continued three times (i.e., from May to August 1997; from August to October 1997; and from October 1997 to February 1998). The Board is not willing to grant Western's requested fourth continuance. The Board finds that Western has more than enough time between October 1997 and February 1998 to re-schedule its lawyers' unspecified conflicting "engagements", particularly since Western has three talented counsel of record in this matter.

Since the Division, Jumbo and Western (the "Parties") have been unable or unwilling to arrive at a stipulated schedule as ordered by the Board, the Board hereby adopts the third amendment to the Scheduling Order, as follows:

1. By the terms of the Board's Consolidation Order, the hearing date has already been moved and noticed to begin February 25, 1998. There continues to be the possibility that the hearing will require additional days to complete. Thus, the Parties should be aware that the hearing may continue on February 26, 1998 and February 27, 1998, so counsel and their witnesses will be expected to be available on those dates.

2. The Division shall have until Friday, November 7, 1997 to serve on Western and Jumbo, and to file with the Board's Secretary a Supplemental Memorandum (original and 12 copies), not to exceed 10 pages in length, not counting exhibits, limited solely to the Bond Issue.

3. By November 10, 1997, Western and Jumbo shall serve on the Division and file with the Board's Secretary their respective Witness Lists (original and 12 copies).

4. Western and Jumbo shall each have until December 10, 1997 to serve on the Division and to file with the Board's Secretary a Supplemental Memorandum (original and 12 copies), not to exceed 10 pages in length, not

counting exhibits, limited solely to the Bond Issue.

5. By December 15, 1997, the Division shall serve on Western and Jumbo and file with the Board's Secretary the Division's Witness List (original and 12 copies).

6. By no later than December 22, 1997, the Division may file an optional Supplemental Reply Memorandum, not to exceed 5 pages in length, not counting exhibits, limited solely to the Bond Issue.

7. The Parties shall coordinate amongst themselves to make their respective pre-identified witnesses available for oral depositions in Salt Lake City during the business days between the dates January 12-23, 1998, inclusive. If all counsel agree to take a deposition on a date not falling within the stated period, that is permissible so long as the mutually agreed date does not and will not interfere in any way with the hearing date, or any of the other deadlines, set in this matter.

8. Dispositive motions, if any, shall be served on the Parties and filed with the Board's Secretary (original and 12 copies) no later than Friday, January 30, 1998. (If a dispositive motion is served and filed on or near said deadline, the dispositive motion shall be served so as to arrive at opposing counsel's office no later than 5 p.m. Salt Lake City time on January 30, 1998).

Responses in support or opposition to any such dispositive motions shall be served and filed with the Secretary (original and 12 copies) no later than Monday, February 9, 1998. No replies to the responses shall be served and filed.

9. The Division, Western and Jumbo shall serve and file their respective Exhibit Lists and pre-marked Exhibits (original set and 12 copy sets) with the Board's Secretary by Monday, February 9, 1998.

10. Motions, if any, by a Party to amend its Witness List shall be served on the other Parties and filed with the Secretary (original and 12 copies) no later than February 9, 1998, and such motions will only be granted for good cause shown.


11. On the date the Parties must file their respective Exhibit Lists and Pre-marked Exhibits with the Board's Secretary (i.e., February 9, 1998), they shall provide the other parties courtesy copy sets of the same.

12. The above changes shall supersede any changes created by the First Amendment or Second Amendment. Except and unless specifically amended herein, the Scheduling Order and the Consolidation Order remain in full force and effect.

For all purposes, a signed faxed copy of this Order shall be deemed
the equivalent of a signed original.

Issued this 24th day of October, 1997.

STATE OF UTAH
BOARD OF OIL, GAS & MINING

By 
Dave D. Lauriaki
Its Chairman

Certificate of Service

I hereby certify that I mailed, postage prepaid, a true and correct copy of the foregoing "ORDER FOR THIRD AMENDMENT TO PRE-HEARING SCHEDULING AND DISCOVERY ORDER" this 27 day of October, 1997 to the following:

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